



Warren T. Burns  
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January 8, 2016

Honorable Charles R. Breyer  
United States District Judge  
Courtroom 6, 7th Floor  
450 Golden Gate Avenue  
San Francisco, CA 94102

Re: Application for Position on Plaintiffs' Steering Committee in *In re Volkswagen "Clean Diesel" Marketing, Sales Practices and Products Liability Litigation*, 15-MD- 2672 CRB (JSC)

Dear Judge Breyer:

Pursuant to Pretrial Order No. 2, I am writing to apply for a position on the Plaintiffs' Steering Committee in this case. If selected, I can assure the Court that I will make the successful resolution of this matter my highest priority and my firm will devote every necessary resource. I have attached a copy of my resume to this letter as Exhibit 1.

### **Professional Experience in Complex Litigation**

I am the founding and co-managing partner of Burns Charest LLP, a trial lawyers' boutique with offices in Dallas, Texas and New Orleans, Louisiana. I founded my firm in April 2015, committing myself, my partners, and my associates to representing parties in complex litigation throughout the country—with a focus on protecting consumer rights. Prior to forming Burns Charest, I was a partner at Susman Godfrey LLP.

I have spent my career serving in leadership roles in complex class actions very much like the case before this Court. Currently, I serve as co-lead counsel for a class of end-payor indirect purchasers in *In re Vehicle Carrier Services Antitrust Litigation*, MDL No. 2471, pending in the District of New Jersey before the Honorable Esther Salas. In this national class action involving dozens of cases and law firms, I have managed briefing and argument on motions to dismiss and have reached early and significant settlements with two of the principal defendants.

I also serve as co-lead counsel in *In re Crude Oil Commodity Futures Litigation*, No. 11-cv-03600, pending in the Southern District of New York before the Honorable Katherine B. Forrest (previously assigned to the Honorable William H. Pauley III). This national class action involves complex antitrust and commodities claims. For over four years, I have managed dozens of firms in this litigation, argued every motion, and personally negotiated a settlement with the defendants that is awaiting final approval.

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While at Susman Godfrey I served as co-lead counsel for the end-payor plaintiffs in the *In re Automotive Parts Antitrust Litigation*, MDL No. 2311, pending in the Eastern District of Michigan before the Honorable Marianne O. Battani. This sprawling case involves over 30 sub-cases and dozens of defendants. I played a central role in developing the case management strategy to move sub-cases on parallel discovery and motion practice tracks. I managed briefing on, and argued, numerous dispositive motions. I also personally led negotiations with several defendants resulting in well over \$100 million in settlements for the indirect purchaser classes.

I am listed in the International Who's Who of Competition Lawyers. I have been selected as a Texas Top 100 Trial Lawyer and Texas Rising Star. And recently I have been nominated to elected membership in the American Law Institute.

I refer the Court to my resume for other relevant cases. The contact information for the judges referenced in the preceding paragraphs is as follows:

Hon. Katherine B. Forrest: (212) 805-0276

Hon. William H. Pauley III: (212) 805-6387

Honorable Esther Salas: 973-297-4887

Hon. Marianne O. Battani: (313) 234-2625

### **Commitment to this Litigation and Other Factors**

I am seeking a position on the Plaintiffs' Steering Committee to represent all owners and lessees of affected vehicles. At this stage in the litigation, I do not anticipate any conflict between owners and lessees that would preclude joint representation. I agree with certain plaintiffs that the dealership plaintiffs should be represented separately.

I can assure the Court that I am ready and able to commit my time, energy, and focus to this very important litigation. Since the outset of this case, my firm and I have devoted significant resources to pursuing these claims for our clients. Along with my partners and associates, I have engaged in a very detailed factual investigation into the claims before the Court and worked with numerous other firms to address preliminary matters related to case management and strategy. Significantly, I have engaged the services of a world-renowned expert in diesel engine mechanics and exhaust from the leading research university studying such matters. I have also spent significant time and resources addressing potential damages issues with a leading economist.

Most recently, I collaborated with the Robins Kaplan firm to file new complaints in the Eastern District of Virginia, No. 16-028 (E.D. Va.), and before this Court, No. 16-cv-0102 (N.D. Cal.). These complaints contain highly detailed explications of the plaintiffs' claims and the complex factual issues at stake in this litigation. The complaints flow from our detailed investigation and we hope will benefit the class by serving as potential models for a consolidated amended complaint. We have filed in both districts for eventual transfer to this Court to ensure the plaintiffs' jurisdictional bases and arguments are as strong possible in light of anticipated motion practice by the defendants. I have attached a copy of the Northern District of California complaint as Exhibit 2.

If selected to serve on the Plaintiffs' Steering Committee, my firm will continue to devote every resource necessary to prosecute this litigation. I have already composed a team who will join me in litigating this case. Brief biographies of my team members are attached as Exhibit 3. My firm has

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more than adequate staff and financial resources to litigate this case, which I am happy to discuss in greater detail if the Court desires.

Finally, Your Honor, I have demonstrated an ability to work cooperatively with other counsel in both this case and throughout my career. As Your Honor will recall, I argued on behalf of numerous plaintiffs and counsel for transfer to the Eastern District of Virginia at the December hearing in New Orleans. Over thirty firms have supported my application for membership on the Plaintiffs' Steering Committee.<sup>1</sup> And I have worked cooperatively with defense counsel in this case on various case management issues. Further, the following defense counsel with whom I have worked in cases referenced in this application have agreed to speak to my qualifications and ability to work cooperatively with opposing counsel should the Court have any questions in this regard: John M. Majoras, Partner, Jones Day, (202) 879-7652; Jeremy J. Calsyn, Partner, Cleary Gottlieb, (202) 974-1522; Trey Nicoud, Partner, Gibson Dunn & Crutcher, (415) 393-8308; and Anita Stork, Partner, Covington & Burling, (415) 591-7050.

I look forward to working with Your Honor and all the parties and counsel in this case. I am very happy to answer any additional questions the Court may have.

Best regards,

/s/ Warren T. Burns  
Warren T. Burns, Partner

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<sup>1</sup> A list of the firms supporting this application is attached as Exhibit 4.